SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 447.

GOOD SHOT, AN INDIAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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United States circuit court of appeals, eighth circuit.

GOOD SHOT, AN INDIAN, PLAINTIFF IN ERROR, *vs.* THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.	On certificate from the United States circuit court of appeals for the eighth circuit.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Paul, Minnesota, on the 11th day of June, A. D. 1900, certifies that the record on file in the action above entitled, which is pending in this court upon a writ of error duly issued to review a judgment rendered in said action in favor of the defendant in error and against the plaintiff in error by the United States circuit court for the district of South Dakota, discloses the following facts:

On February 10, A. D. 1899, the plaintiff in error, Good Shot, who is an Indian, was indicted by the grand jury in the United States district court for the district of South Dakota and was charged in said indictment with the crime of murdering Emily Good Shot. This indictment, together with the recognizances, was thereafter remitted to the United States circuit court for the district of South Dakota. The plaintiff in error was arraigned and pleaded not guilty to this indictment. A jury was called, he was tried, and the jury returned this verdict: "We, the jury in the above-entitled action, find the defendant guilty as charged in the indictment, without capital punishment." Upon this verdict the plaintiff in error was afterwards sentenced by the United States circuit court for the district of South Dakota to imprisonment at hard labor in the penitentiary at Sioux Falls, in the State of South Dakota, for the term of his natural life. Numerous errors were properly assigned to various rulings
2 and instructions of the court upon the trial of this case which present for determination important questions of law, and a writ of error has been duly sued out of this court directed to the United States circuit court for the district of South Dakota to review the judgment and sentence pronounced by that court and the various rulings upon the trial which have been assigned as error, and the case presented by said writ and the return thereon is pending in this court for hearing. A motion has been made by the defendant in error to dismiss the writ of error herein and the case pending thereon upon the ground that this court is without jurisdiction to entertain the same or to hear and determine the questions presented by the writ and the assignment of errors.

And the said circuit court of appeals for the eighth circuit further certifies that the following question of law is presented by the motion to dismiss and the record in this case, that its decision is indispensable to a disposition of the case, and that to the end that this court may properly decide the issues of law presented this court desires the instructions of the Supreme Court of the United States upon the following question and proposition of law, to wit, "Has this circuit court of appeals jurisdiction to review upon writ of error the trial, judgment, and sentence of an Indian to imprisonment for life founded upon a verdict rendered on a trial of an indictment of the Indian for murder by which verdict the jury found the defendant 'guilty as charged in the indictment, without capital punishment?'"

In witness whereof the undersigned judges, holding the said United States circuit court of appeals for the eighth circuit, have hereunto set their hands this 11th day of June, A. D. 1900, at St. Paul, Minnesota, and ordered that the foregoing certificate be filed in the said circuit
3 court of appeals and by the clerk of said court duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
AMOS M. THAYER,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

4 United States circuit court of appeals for the eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of Good Shot, an Indian, plaintiff in error, v. The United States of America, No. 1353, May term, 1900, was duly filed and entered of record in my office by order of said court and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit at the city of St. Paul, Minnesota, this eleventh day of June, A. D. 1900.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

5 (Indorsed:) U. S. circuit court of appeals, eighth circuit, No. 1353. Good Shot, an Indian, plaintiff in error, v. The United States of America. Certificate of question to the Supreme Court of the United States. Filed June 11, 1900. John D. Jordan, clerk.

(Indorsement on cover:) Certificate. File No. 17932. U. S. C. C. of appeals, 8th circuit. Term No. 447. Good Shot, an Indian, plaintiff in error, v. The United States. Filed October 15, 1900.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 447.

GOOD SHOT, AN INDIAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

PETITION TO REQUIRE ENTIRE RECORD TO BE SENT UP FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, AND FOR LEAVE TO PROCEED IN FORMA PAUPERIS.

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1 UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

GOOD SHOT, AN INDIAN, PLAINTIFF IN ERROR, *vs.* THE UNITED STATES OF AMERICA, DEFENDANT in error. } No. 447. October term, 1900.

Writ of error to the circuit court of the United States from the district of South Dakota, southern division, from the circuit court of appeals.

To the honorable the Judges of the Supreme Court of the United States:

Now comes the plaintiff in error above-named and respectfully showeth unto your honors as follows:

1. That he was convicted of the crime of murder in the first degree without capital punishment in the circuit court of the United States in and for the district of South Dakota, at the April term, 1899, both this petitioner and person murdered being Indians of full blood, under the charge of an Indian agent, and the crime was committed on the Pine Ridge Indian Reservation, in the district of South Dakota, and that he was thereupon sentenced to imprisonment for life in the penitentiary of South Dakota for the period of his natural life.

2. That thereafter and in due time a bill of exceptions was duly allowed and settled and a writ of error allowed by the honorable circuit court of appeals for the eighth circuit, assignments of error having been duly filed, and that the citation in error was duly served and returned.

3. That upon a proper affidavit the honorable circuit court of appeals allowed this petitioner to prosecute his writ of error as a poor person, he being unable to either give bond or to make a deposit to cover the costs in the premises.

4. That the United States district attorney for the said district of South Dakota moved the honorable circuit court of appeals to dismiss said writ of error upon the ground that this being capital offense
2 the same should *same should* have been taken by writ of error to the honorable Supreme Court of the United States, whereupon the honorable circuit court of appeals certified the question as to whether it had jurisdiction to entertain the said writ of error.

5. That your petitioner had properly prepared and printed at his expense the record and brief of said writ of error, and filed in said circuit court of appeals the proper number of each, in accordance with the rules of that court; that he is without property, money, or friends to either pay for a copy of the record to file in this court or to have same printed, or a brief printed, and his attorney was assigned by the trial court to defend him.

6. Your petitioner further showeth that he is advised and believes that his writ of error is meritorious, and that he is entitled to a reversal of the aforesaid conviction and sentence, and that he believed that the honorable circuit court of appeals had jurisdiction of said writ of error and was so advised by his counsel at and before suing the same out; and that the dismissal thereof or the refusal of your honors to order the record certified and filed in this court will leave him without any remedy or means of redress, wherefore your petitioner most humbly prays as follows:

1. That your honors make an order directing that a copy of the record in the premises be made and certified at the expense of the United States to your honors for the consideration of the errors assigned by him upon his writ of error to the honorable circuit court of appeals for the said eighth circuit.

2. That your honors take jurisdiction of this petitioner's writ of error, just as though the same had been in the first instance sued out and made returnable to the honorable Supreme Court of the United States, and that the entire record and all the papers be certified and docketed in this court.

3. Your petitioner further prays that the printed record and his brief as printed and filed in the honorable circuit court of appeals may be received, filed, and used just as though they had been first printed
3 under the rules of this court.

4. That he be permitted to prosecute his writ of error herein as a poor person.

And your petitioner will ever pray as in duty bound.

MELVIN GRIGSBY & S. H. WRIGHT,
Attorneys for the Plaintiff in Error.

STATE OF SOUTH DAKOTA,
County of Minnehaha, ss:

Good Shot, the plaintiff in error above named, being duly sworn, deposes and says that the foregoing petition is true in substance and in fact.

GOOD SHOT.

Witnesses:
T. P. HENNESSY.
L. B. HULL.

Sworn to and subscribed before me on the 29th day of September, A. D. 1900.

[SEAL.]

L. S. TYLER,
Notary Public in and for Minnehaha County, South Dakota.

SIOUX FALLS, S. D., *Sept. 29, 1900.*

We hereby certify that we have examined the foregoing petition of Good Shot, the plaintiff in error, and believe that the same is in all respects true, meritorious, and made in good faith.

MELVIN GRIGSBY & S. H. WRIGHT,
Attorneys for Plaintiff in Error.

4 (Indorsed:) Original. In the Supreme Court of the United States. October term, 1900. Good Shot, an Indian, pl'ff in error, v. The United States, def't in error. Petition. Melvin Grigsby and S. H. Wright, att's for pl'ff in error.

5 (Indorsed:) File No., 17932. Supreme Court, U. S. October term, 1900. Term No., 447. Good Shot, an Indian, pl'ff in error, vs. The United States. Petition to require entire record to be sent up, and for leave to proceed in forma pauperis. Filed Oct. 17, 1900.

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No. 447.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 447.

GOOD SHOT, AN INDIAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

CERTIFIED COPY OF ORDER OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT VACATING AND ANNULLING ORDER TO CERTIFY CASE TO THE SUPREME COURT OF THE UNITED STATES AND RECALLING SAID CERTIFICATE.

FILED OCTOBER 17, 1900.
(17032.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 447.

GOOD SHOT, AN INDIAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

CERTIFIED COPY OF ORDER OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT VACATING AND ANNULLING ORDER TO CERTIFY CASE TO THE SUPREME COURT OF THE UNITED STATES AND RECALLING SAID CERTIFICATE.

1 United States circuit court of appeals, eighth circuit, May term, 1900.

MONDAY, *October 15, 1900.*

GOOD SHOT, AN INDIAN, PLAINTIFF in error, *vs.* THE UNITED STATES OF AMERICA.	No. 1353. In error to the circuit court of the United States for the district of South Dakota.

It appearing to the court that since the order was entered certifying a certain question arising herein to the Supreme Court of the United States for its determination the point certified has been determined by the Supreme Court of the United States in Fitzpatrick vs. United States, 178 U. S., 304, it is now ordered that the order heretofore made at the present May term certifying the case to the Supreme Court of the United States be, and the same is hereby, vacated and annulled, and that the certificate be, and the same is hereby, recalled.

October 15, 1900.

United States circuit court of appeals, eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, do hereby certify that the above and foregoing is a full, true, and complete copy of the order vacating and recalling the certificate of questions to the Supreme Court in the case of Good Shot, an Indian, plaintiff in error, vs. The United States of America, No. 1353, as full, true, and complete as the original of the same now remains on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of St. Louis, Missouri, in the eighth circuit, this fifteenth day of October, A. D. 1900.

[SEAL.] JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

2 (Indorsed:) U. S. circuit court of appeals, eighth circuit, May term, 1900. No. 1353. Good Shot, an Indian, plaintiff in error, vs. United States of America. Certified copy order vacating and recalling certificate of questions to Supreme Court.

3 (Indorsed:) File No. 17932. Supreme Court U. S., October term, 1900. Term No. 447. Good Shot, an Indian, P. E., vs. The United States. Certified copy of order of U. S. circuit court of appeals vacating and recalling certificate of questions to U. S. Sup. Court. Filed Oct. 17, 1900.

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Supreme Court of the United States.

No. 447.—October Term, 1900.

Good Shot, an Indian, Plaintiff in Error, vs. The United States. } On a certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

[October 29, 1900.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

Good Shot, an Indian, was indicted in the District Court of the United States for the District of South Dakota for the murder of Emily Good Shot, and, the indictment having been remitted to the Circuit Court, was arraigned and pleaded not guilty; was tried; found "guilty as charged in the indictment, without capital punishment;" was sentenced to imprisonment at hard labor in the penitentiary at Sioux Falls, in the State of South Dakota for life; and a writ of error was duly sued out of the Circuit Court of Appeals for the Eighth Circuit to review the judgment of the Circuit Court. The United States moved to dismiss the writ for want of jurisdiction, whereupon the Circuit Court of Appeals certified to this court, on facts stated, the following question: "Has this Circuit Court of Appeals jurisdiction to review upon writ of error the trial, judgment, and sentence of an Indian to imprisonment for life founded upon a verdict rendered on a trial of an indictment of the Indian for murder, by which verdict the jury find the defendant 'guilty as charged in the indictment, without capital punishment.'"

The certificate was duly transmitted to the clerk of this court, but not filed until October 15, 1900; and on October 17, Good Shot filed a petition praying that a certiorari might be issued requiring the entire record and cause to be sent up from the Circuit Court of Appeals. On the same day a certified transcript of an order of the Circuit Court of Appeals, entered October 15, purporting to vacate and annul the order certifying the case, and to recall the certificate, in view of the decision of this court in *Fitzpatrick* v. *United States*, 178 U. S. 304, was filed.

In the case referred to we held that a conviction for murder, punishable with death, was not the less a conviction for a capital crime by reason of the fact that the jury, in a particular case, qualified the punishment, and that, in such circumstances, this court had jurisdiction under section 5 of the judiciary act of March 3, 1891, providing therefor "in cases of conviction of a capital crime." It followed that Circuit Courts of Appeals did not have jurisdiction.

If we should dismiss the certificate because of the action of the Circuit Court of Appeals on October 15, or if we answer the question certified, the same result is reached, namely, the dismissal of the writ of error below. And in the posture of the case disclosed by the record, we think the better course is to answer the question, which we do necessarily in the negative.

As the Circuit Court of Appeals did not have jurisdiction, the application for a certiorari must be denied. That writ may be issued by this court to the Circuit Courts of Appeals under section 6 of the act of March 3, 1891, on application, and ordinarily after judgment, in cases in which judgments are made final in those courts by the section, and also where questions of law have been certified to this court by those courts for their guidance in disposing of such cases.

In this case there is no judgment in the Circuit Court of Appeals, and the sole question certified relates to the jurisdiction of that court, and it having been determined that jurisdiction does not exist, the writ of certiorari cannot properly be issued to require the court to send up a cause over which it has no jurisdiction for determination on the merits. The remedy is by writ of error from this court to the Circuit Court.

The question certified will be answered in the negative, and the petition for certiorari will be denied.

So ordered.

True copy.

Test:

Clerk Supreme Court, U. S.